

AMENDED IN SENATE MAY 19, 2010

AMENDED IN SENATE APRIL 6, 2010

**SENATE BILL**

**No. 1391**

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**Introduced by Senator Yee**

February 19, 2010

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An act to ~~to~~ add Sections 17060 and 23603 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1391, as amended, Yee. Tax credits: reporting information and recapture.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would require a taxpayer doing business in California that claims a tax credit to submit to the Franchise Tax Board on the original return specified information, including the number of employees employed by the taxpayer in the state, ~~the amount of tax credits claimed by the taxpayer on the return,~~ and the number of jobs created by the tax credit.

The bill would also require, in cases in which a taxpayer ~~subject to the above provisions~~ has a net decrease in the number of full-time employees for a credit added by statute on or after January 1, 2011, the credit to be disallowed and the entire amount of any credit previously allowed to be recaptured and the taxpayer to be liable for any credits on previous tax returns, as specified.

~~This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.~~

This bill would take effect immediately as a tax levy.

Vote:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 17060 is added to the Revenue and  
2     Taxation Code, to read:  
3     17060. (a) Notwithstanding any other provision of this part,  
4     for taxable years beginning on or after January 1, 2011, a taxpayer  
5     doing business in this state that claims any business credit against  
6     the “net tax,” as defined in Section 17039, shall annually include  
7     on the timely filed original return the following information in the  
8     form and manner as required by forms and instructions prescribed  
9     by the Franchise Tax Board:  
10    (1) The number of full-time, part-time, and temporary  
11    employees, as defined, employed by the taxpayer in the state for  
12    the current and preceding taxable years.  
13    (2) The number of full-time jobs, part-time jobs, and temporary  
14    jobs created by the tax credit.  
15    (b) Notwithstanding any other law, for any business credit  
16    against the “net tax,” as defined in Section 17039, that is allowed  
17    by an act that takes effect on or after the effective date of the act  
18    adding this section, both of the following shall apply if the taxpayer  
19    has a net decrease, as determined under subdivision (c), in the  
20    number of full-time equivalent employees according to the  
21    information provided pursuant to subdivision (a):  
22    (1) The entire amount of the credits for all taxable years shall  
23    be disallowed.  
24    (2) Any previously allowed credits shall be recaptured and the  
25    taxpayer shall be liable for the entire amount of any credits on  
26    previous tax returns.  
27    (c) (1) The net decrease in full-time equivalent employees shall  
28    be determined, on and after January 1, 2014, on a full-time  
29    equivalent basis by subtracting from the amount determined in  
30    subparagraph (A) the amount determined in subparagraph (B).  
31    (A) The total number of full-time equivalent employees employed  
32    in the three preceding taxable years by the taxpayer and by any  
33    trade or business acquired by the taxpayer during the current  
34    taxable year, divided by three.

1     (B) *The total number of full-time equivalent employees employed*  
2 *in the current taxable year by the taxpayer and by any trade or*  
3 *business acquired by the taxpayer during the current taxable year.*

4     (2) *“Full-time equivalent” means either of the following:*

5     (A) *In the case of a full-time employee paid hourly qualified*  
6 *wages, “full-time equivalent” means the total number of hours*  
7 *worked for the taxpayer by the employee (not to exceed 2,000*  
8 *hours per employee) divided by 2,000.*

9     (B) *In the case of a salaried full-time employee, “full-time*  
10 *equivalent” means the total number of weeks worked for the*  
11 *taxpayer by the employee divided by 52.*

12     (3) *All employees of the trades or businesses that are treated*  
13 *as related under either Section 267, 318, or 707 of the Internal*  
14 *Revenue Code shall be treated as employed by a single taxpayer.*

15     (4) *The amount of business credits recaptured pursuant to*  
16 *subdivision (b) shall include the business credits reported on*  
17 *previous tax returns and interest computed using the adjusted*  
18 *annual rate established in Section 19521 from the due date of the*  
19 *return for each taxable year in which the business credit was*  
20 *claimed to the date of the payment of the additional tax resulting*  
21 *from the application of this section.*

22     (5) *For purposes of this section, all of the following definitions*  
23 *apply:*

24     (A) *“Business credit” means a credit added to this part on or*  
25 *after January 1, 2011, and allowed to taxpayers engaged in or*  
26 *carrying on any trade, business, profession, vocation or calling,*  
27 *or commercial activity in the state, including activities in the state*  
28 *that benefit an affiliated entity of the taxpayer.*

29     (B) *“Full-time employee” means an employee who works an*  
30 *average of 35 hours in a week, calculated monthly.*

31     (C) *“Part-time employee” means an employee who works less*  
32 *than an average of 35 hours in a week, calculated monthly.*

33     (D) *“Temporary employee” means an employee who works less*  
34 *than 120 days per year.*

35     (d) *Nothing in this section shall limit the authority of the*  
36 *Franchise Tax Board to audit the information provided by the*  
37 *taxpayer pursuant to subdivision (a).*

38     (e) *Chapter 3.5 (commencing with Section 11340) of Part 1 of*  
39 *Division 3 of Title 2 of the Government Code shall not apply to*  
40 *any standard, criterion, procedure, determination, rule, notice, or*

1 guideline established or issued by the Franchise Tax Board  
2 pursuant to subdivision (a).

3 SEC. 2. Section 23603 is added to the Revenue and Taxation  
4 Code, to read:

5 23603. (a) Notwithstanding any other provision of this part,  
6 for taxable years on or after January 1, 2011, a taxpayer doing  
7 business in the state that claims any business credit against the  
8 “tax,” as defined in Section 23036, shall annually include on the  
9 timely filed original return the following information in the form  
10 and manner as required by forms and instructions prescribed by  
11 the Franchise Tax Board:

12 (1) The number of full-time, part-time, and temporary  
13 employees, as defined, employed by the taxpayer in the state for  
14 the current and preceding taxable years.

15 (2) The number of full-time jobs, part-time jobs, and temporary  
16 jobs created by the tax credit.

17 (b) Notwithstanding any other law, for any business credit  
18 against the “tax,” as defined in Section 23036, that is allowed by  
19 an act that takes effect on or after the effective date of the act  
20 adding this section, both of the following shall apply if the taxpayer  
21 has a net decrease, as determined under subdivision (c), in the  
22 number of full-time equivalent employees according to the  
23 information provided pursuant to subdivision (a):

24 (1) The entire amount of the credits for all taxable years shall  
25 be disallowed.

26 (2) Any previously allowed credits shall be recaptured and the  
27 taxpayer shall be liable for the entire amount of any credits on  
28 previous tax returns.

29 (c) (1) The net decrease in full-time equivalent employees shall  
30 be determined, on and after January 1, 2014, on a full-time  
31 equivalent basis by subtracting from the amount determined in  
32 subparagraph (A) the amount determined in subparagraph (B).

33 (A) The total number of full-time equivalent employees employed  
34 in the three preceding taxable years by the taxpayer and by any  
35 trade or business acquired by the taxpayer during the current  
36 taxable year, divided by three.

37 (B) The total number of full-time equivalent employees employed  
38 in the current taxable year by the taxpayer and by any trade or  
39 business acquired by the taxpayer during the current taxable year.

40 (2) “Full-time equivalent” means either of the following:

1 (A) In the case of a full-time employee paid hourly qualified  
2 wages, “full-time equivalent” means the total number of hours  
3 worked for the taxpayer by the employee (not to exceed 2,000  
4 hours per employee) divided by 2,000.

5 (B) In the case of a salaried full-time employee, “full-time  
6 equivalent” means the total number of weeks worked for the  
7 taxpayer by the employee divided by 52.

8 (3) All employees of the trades or businesses that are treated  
9 as related under either Section 267, 318, or 707 of the Internal  
10 Revenue Code shall be treated as employed by a single taxpayer.

11 (4) The amount of business credits recaptured pursuant to  
12 subdivision (b) shall include the business credits reported on  
13 previous tax returns and interest computed using the adjusted  
14 annual rate established in Section 19521 from the due date of the  
15 return for each taxable year in which the business credit was  
16 claimed to the date of the payment of the additional tax resulting  
17 from the application of this section.

18 (5) For purposes of this section, all of the following definitions  
19 apply:

20 (A) “Business credit” means a credit added to this part on or  
21 after January 1, 2011, and allowed to taxpayers engaged in or  
22 carrying on any trade, business, profession, vocation or calling,  
23 or commercial activity in the state, including activities in the state  
24 that benefit an affiliated entity of the taxpayer.

25 (B) “Full-time employee” means an employee who works an  
26 average of 35 hours in a week, calculated monthly.

27 (C) “Part-time employee” means an employee who works less  
28 than an average of 35 hours in a week, calculated monthly.

29 (D) “Temporary employee” means an employee who works less  
30 than 120 days per year.

31 (d) Nothing in this section shall limit the authority of the  
32 Franchise Tax Board to audit the information provided by the  
33 taxpayer pursuant to subdivision (a).

34 (e) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
35 Division 3 of Title 2 of the Government Code shall not apply to  
36 any standard, criterion, procedure, determination, rule, notice, or  
37 guideline established or issued by the Franchise Tax Board  
38 pursuant to subdivision (a).

39 SEC. 3. This act provides for a tax levy within the meaning of  
40 Article IV of the Constitution and shall go into immediate effect.

1     ~~SECTION 1. Section 17060 is added to the Revenue and~~  
2     ~~Taxation Code, to read:~~

3     ~~17060. (a) Notwithstanding any provision of this part, a~~  
4     ~~taxpayer doing business in the state that claims any credit against~~  
5     ~~the “net tax,” as defined in Section 17039, shall annually submit~~  
6     ~~to the Franchise Tax Board on the timely filed original return the~~  
7     ~~following information:~~

8     ~~(1) The number of full-time employees, as defined, part-time~~  
9     ~~employees, and temporary employees employed by the taxpayer~~  
10    ~~in the state.~~

11    ~~(2) The amount of tax credits claimed by the taxpayer on the~~  
12    ~~return for each tax credit under this part.~~

13    ~~(3) The number of full-time jobs, part-time jobs, and temporary~~  
14    ~~jobs created by the tax credit.~~

15    ~~(4) A list of occupations, job classifications, and expected~~  
16    ~~average wages for the full-time jobs, part-time jobs, and temporary~~  
17    ~~jobs created by the tax credit.~~

18    ~~(5) A certification by the taxpayer that the information is true~~  
19    ~~and correct and contains no knowing misrepresentation.~~

20    ~~(6) The taxpayer’s office mailing address and office telephone~~  
21    ~~number.~~

22    ~~(b) Notwithstanding any provision of this part, for any credit~~  
23    ~~against the “net tax,” as defined in Section 17039, added to this~~  
24    ~~chapter on or after January 1, 2011, the credit shall be disallowed,~~  
25    ~~and the entire amount of any credit previously allowed under this~~  
26    ~~part shall be recaptured and the taxpayer shall be liable for any~~  
27    ~~credits on previous tax returns if the taxpayer has a net decrease~~  
28    ~~in the number of full-time employees according to the information~~  
29    ~~specified in (a):~~

30    ~~(1) The net decrease in qualified full-time employees shall be~~  
31    ~~determined on an annual full-time equivalent basis by subtracting~~  
32    ~~from the amount determined in subparagraph (A) the amount~~  
33    ~~determined in subparagraph (B):~~

34    ~~(A) The total number of qualified full-time employees employed~~  
35    ~~in the preceding taxable year by the taxpayer and by any trade or~~  
36    ~~business acquired by the taxpayer during the current taxable year.~~

37    ~~(B) The total number of full-time employees employed in the~~  
38    ~~current taxable year by the taxpayer and by any trade or business~~  
39    ~~acquired during the current taxable year.~~

40    ~~(2) “Annual full-time equivalent” means either of the following:~~

1     ~~(A) In the case of a full-time employee paid hourly qualified~~  
2     ~~wages, “annual full-time equivalent” means the total number of~~  
3     ~~hours worked for the taxpayer by the employee (not to exceed~~  
4     ~~2,000 hours per employee) divided by 2,000.~~

5     ~~(B) In the case of a salaried full-time employee, “annual~~  
6     ~~full-time equivalent” means the total number of weeks worked for~~  
7     ~~the taxpayer by the employee divided by 52.~~

8     ~~(3) All employees of the trades or businesses that are treated as~~  
9     ~~related under either Section 267, 318, or 707 of the Internal~~  
10    ~~Revenue Code shall be treated as employed by a single taxpayer.~~

11    ~~SEC. 2. Section 23603 is added to the Revenue and Taxation~~  
12    ~~Code, to read:~~

13    ~~23603. (a) Notwithstanding any provision of this part, a~~  
14    ~~taxpayer doing business in the state that claims any credit against~~  
15    ~~the “tax”, as defined in Section 23036, shall submit to the Franchise~~  
16    ~~Tax Board on the timely filed original return the following~~  
17    ~~information annually when filing a return:~~

18    ~~(1) The number of full-time employees, as defined, part-time~~  
19    ~~employees, and temporary employees employed by the taxpayer~~  
20    ~~in the state.~~

21    ~~(2) The amount of tax credits claimed by the taxpayer on the~~  
22    ~~return for each tax credit under this part.~~

23    ~~(3) The number of full-time jobs, part-time jobs, and temporary~~  
24    ~~jobs created by the tax credit.~~

25    ~~(4) A list of occupations, job classifications, and expected~~  
26    ~~average wages for the full-time jobs, part-time jobs, and temporary~~  
27    ~~jobs created by the tax credit.~~

28    ~~(5) A certification by the taxpayer that the information is true~~  
29    ~~and correct and contains no knowing misrepresentation.~~

30    ~~(6) The taxpayer’s office mailing address and office telephone~~  
31    ~~number.~~

32    ~~(b) Notwithstanding any provision of this part, for any credit~~  
33    ~~against the “net tax,” as defined in Section 17039, added to this~~  
34    ~~chapter on or after January 1, 2011, the credit shall be disallowed,~~  
35    ~~and the entire amount of any credit previously allowed under this~~  
36    ~~part shall be recaptured and the taxpayer shall be liable for any~~  
37    ~~credits on previous tax returns if the taxpayer has a net decrease~~  
38    ~~in the number of full-time employees according to the information~~  
39    ~~specified in (a).~~

1     ~~(1) The net decrease in qualified full-time employees shall be~~  
2     ~~determined on an annual full-time equivalent basis by subtracting~~  
3     ~~from the amount determined in subparagraph (A) the amount~~  
4     ~~determined in subparagraph (B).~~

5     ~~(A) The total number of qualified full-time employees employed~~  
6     ~~in the preceding taxable year by the taxpayer and by any trade or~~  
7     ~~business acquired by the taxpayer during the current taxable year.~~

8     ~~(B) The total number of full-time employees employed in the~~  
9     ~~current taxable year by the taxpayer and by any trade or business~~  
10    ~~acquired during the current taxable year.~~

11    ~~(2) “Annual full-time equivalent” means either of the following:~~

12    ~~(A) In the case of a full-time employee paid hourly qualified~~  
13    ~~wages, “annual full-time equivalent” means the total number of~~  
14    ~~hours worked for the taxpayer by the employee (not to exceed~~  
15    ~~2,000 hours per employee) divided by 2,000.~~

16    ~~(B) In the case of a salaried full-time employee, “annual~~  
17    ~~full-time equivalent” means the total number of weeks worked for~~  
18    ~~the taxpayer by the employee divided by 52.~~

19    ~~(3) All employees of the trades or businesses that are treated as~~  
20    ~~related under either Section 267, 318, or 707 of the Internal~~  
21    ~~Revenue Code shall be treated as employed by a single taxpayer.~~

22    ~~SEC. 3. This act provides for a tax levy within the meaning of~~  
23    ~~Article IV of the Constitution and shall go into immediate effect.~~